



Appeal Decision

Site visit made on 7 July 2020 by Hannah Ellison BSc (Hons) MSc

Decision by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2020

Appeal Ref: APP/M4320/W/20/3246307

4A Bold Street, Southport PR9 0DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Diane Shepherd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/01170, dated 23 June 2019, was approved on 16 August 2019 and planning permission was granted subject to conditions.
 - The development permitted is a change of use from an A1 shop to an A4 drinking establishment with an outdoor seating area.
 - The conditions in dispute are:
 - No. 2 which states that: *A suitable scheme of sound insulation that protects the amenity of neighbouring residential properties from the proposed use shall be submitted. The approved scheme shall be agreed in writing with the Local Planning Authority and implemented before the A4 use becomes operational and retained thereafter;* and
 - No. 3 which states that: *No live or recorded music or entertainment shall be provided other than background music (defined as a music noise level (MNL) of LAeq 65dB, 10 minutes 1 metre from any instrument, speaker or wall.)*
 - The reasons given for both conditions are: *In the interests of residential amenity.*
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. Planning permission was granted in August 2019 for a change of use of No 4A Bold Street from a shop within Use Class A1 to a drinking establishment within Use Class A4, subject to a number of conditions, Nos 2 and 3 of which now form the subject of this appeal.
4. Within their Statement of Case, the appellant notes that they 'wish to appeal against condition 2 (the requirement for a scheme of sound insulation), and/or 3 (refusal of permission to allow live music or entertainment)'. They have indicated that they wish to have some live music within the bar. If this were to be allowed, they would then seek to comply with condition 2. However, if permission is not granted to allow live music, the appellant contends that condition 2 would be unnecessary. I will deal with each of these matters in turn.

5. The main issue is therefore whether the conditions are reasonable and necessary having regard to the living conditions of neighbouring residents, with regard to noise.

Reasons

6. The appeal site is an end of terrace, two-storey commercial unit in use as a drinking establishment. It is located on Bold Street, a short distance from the main high street of Southport. There is a variety of retail and commercial uses within the immediate locality, with residential accommodation typically located on the upper floors.
7. The Council are concerned that noise generated within the bar, particularly its first floor, would harm the living conditions of adjoining residents. As such, they consider a scheme of sound insulation is necessary and the restriction of live and recorded music (other than background music) to be reasonable.
8. The appellant seeks to play acoustic type music for limited hours and considers it would be of comparable sound levels to recorded background music which is normally played. There is a residential property immediately adjoining the first floor of the appeal building. I acknowledge the appellant does not intend to have loud entertainment but rather seeks a relaxing ambience. Be that as it may, there is no mechanism to restrict the genre of music which could be played. Given the close relationship with the noise sensitive residential use adjoining the first floor, I am concerned that the use of any live music would be more clearly audible than recorded music where the volume could be easily controlled.
9. It is suggested that the first-floor area of the bar has been little used and live music could be restricted to the ground floor and would only be played at limited times. Be that as it may, the use of the upper floors is likely to change over time. However, even if this remained the case and music was only played downstairs, due to its limited size and open layout there would be no doubt that there would be significant noise transference throughout the bar from ground to first floor.
10. Turning to the matter of sound insulation, particularly in the absence of live music, I note customers would be able to congregate in the upper floor of the bar. Even if the bar attracts a more mature customer and couples rather than large groups, there could nevertheless be a considerable total number of customers, whose cumulative comings and goings, conversations and moving of furniture would cause noise and disturbance to neighbouring occupiers. It would not be comparable to that of a normal household.
11. I have not been provided with any substantive or convincing evidence that suggests the existing wall or any existing insulation is sufficient so as to protect the living conditions of neighbouring occupiers. It is acknowledged there has been a lack of complaints to the existing operation of the bar, however as indicated by the appellant, the first-floor area of the bar has been little used to date. There are no guarantees that the existing low usage of the first floor would continue. Whilst a degree of noise is to be expected from town centre living, this would be typically from the street outside rather than from an adjoining conflicting use at first floor level.

12. Examples of other drinking establishments in Southport have been provided and I have noted their relationship with neighbouring residential properties. However, I do not know the full circumstances of their operation, particularly any noise insulation measures. I cannot therefore be certain that they are directly comparable to the appeal proposal.
13. I note that similar uses within the locality have also been required to include sound insulation. I do not therefore consider that the appellant is at a disadvantage or has been unfairly penalised.
14. Accordingly, the disputed conditions are reasonable and necessary in order to safeguard the living conditions of local residents and they satisfy the other tests for conditions set out in paragraph 55 of the National Planning Policy Framework. The lack of sound insulation and the playing of live and recorded (non-background) music would be harmful to the living conditions of neighbouring residents in terms of noise. As such the proposal, without conditions 2 and 3, would be contrary to Policies EQ4 and EQ10 of A Local Plan for Sefton (April 2017) which seek to ensure developments do not cause significant harm to local amenity.

Other Matter

15. I do not doubt that the appellant has renovated a previously vacant building and seeks to make the business viable, however I do not have any convincing evidence which suggests that this would not be the case without live music or should they be required to include sound insulation. As such, I give this matter little weight.

Recommendation

16. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Hannah Ellison

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

K Taylor

INSPECTOR